were not argued, as I confined the hearing in the first place to the point as to whether the petition had been served, I do not now set aside the bankruptcy petition, but I make an order in the remaining terms of the motion.

It is still open to the applicant, should it be deemed necessary, to apply to have the petition set aside.

The petitioning creditor will pay to the applicant the taxed costs of the motion.

Order accordingly.

Re CONTRABAND MAILS ex M. V. "CONTE ROSSO."

[Orig. Civil Juris. (McElwaine, C.J.) Sept. 26, 1941]

Reprisals Order in Council of 27th November 1939—Personal property of German Ambassador.

The moveable property of the German Ambassador to Russia (a neutral state) seized during a time of war between the British Empire and Germany is enemy property and will be condemned as contraband.

Cases referred to—.

(1) *Porter v. Freudenberg* (1915) 1 K.B. 857.

(2) *Schaffenius v. Goldberg* (1916) 1 K.B. 284.

(3) *The Alwaki* (1940) P. 215.

(4) *Chung Chi Cheung v. King* (1939) M.L.J. 1.

C. H. Butterfield Crown Counsel for the Crown.

The facts and arguments appear sufficiently from the judgment.

Cur. adv. vult.

McElwaine, C.J.—In this case the Crown sought an order for the condemnation of certain mail as contraband, or in the alternative that the proceeds of the sale of the goods set out in the schedule to the Writ, being goods of enemy origin or being enemy property on board the M.V. "Conte Rosso", which sailed from a port other than an enemy port after the 4th December 1939, be retained in Court.

The Conte Rosso was on a voyage from Shanghai to Brindisi.

At the hearing I made an order in terms of the alternative prayer as to all the parcels except five as to which I reserved my decision. The five parcels were parcels of cigars of a declared value of $2,100 Shanghai currency, sent from Shanghai addressed to the German Ambassador Graf von der Schulenburg, Moscow. These parcels were detained in Singapore on the 21st May 1940 and were seized on the 31st of that month. The Writ was issued on 11th and was served on 15th June 1940.

The application is based on the Reprisals Order in Council of the 27th November 1939.

They are the property of the person who was the German Ambassador at Moscow which was at all material times the capital of a neutral State. There is no question but that the German Ambassador was and is an enemy national.

But are goods the property of an enemy national living in a neutral country which was not at the time occupied by Germany 'enemy property'?

Article 6 of the Order in Council defines goods which are enemy property as including goods belonging to any person in any territory under enemy occupation or control. Mr. Butterfield argued that this definition is not exhaustive, and usually definitions which define a thing as 'including' are not regarded as exhaustive.

These cigars I must regard as the personal property of the Ambassador; they have not been shown to have been purchased out of an entertainment allowance provided by the German Government.

I think Enemy property means property owned by an enemy and that the Reprisals Order in Council is not concerned with the destination of the property, unless perhaps if that destination were within the British Empire.

The purpose of the Order is "for restricting further the commerce of Germany". What may be detained under Article 2 of the Order is goods which are enemy property found in a ship which sailed from a port other than an enemy port after the 4th December 1939.

Article 6 does not define "enemy property"; it extends the ordinary meaning of the words. Just as for the purposes of litigation an Englishman or a neutral who is in Germany or in German occupied territory is regarded as an alien enemy, and a German

resident in England is not for these purposes an alien enemy *Porter v Freudenberg*[1], *Schaffenius v. Goldberg*[2], so goods the property of an Englishman or of an ally or of a neutral living in or carrying on business in Germany or in German occupied territory are tainted with Enemy character. To hold otherwise would be to defeat the whole purpose of the Order to damage German trade.

An enemy individual in a neutral country might import goods, the benefit of which might directly or indirectly be transferred to Germany. Directly, because the goods themselves might reach Germany, indirectly because the trade in those goods might build up a German credit in a neutral country. The Order hits German trade and credit.

It is more than a year and a day since the writ was issued and no claim to the goods has been made In *The Alwaki*[3], Merriman P. said "Now there is no doubt that under the law of nations, as it is described in the American case, *The Harrison,* enemy ownership, at any rate, might be presumed after the lapse of a year and a day if no other claimant came forward". This presumption reinforces the strong *prima facie* case made out by the Crown that these cigars are enemy property. Probably these cigars were intended to be for the Ambassador's own use, but the Court cannot inquire into the purposes to which the enemy individual intends to put his goods.

Mr. Butterfield suggested the cigars were destined for German territory in as much as they were destined for a German Embassy. I entertain considerable doubt as to whether an Ambassador's official residence, whether held under a lease from a subject of the State to which the Ambassador is assigned, or held in fee simple by the assigning State, is part of the latter State. In *Chung Chi Cheung v. The King*[4], Lord Atkin delivering the opinion of the Judicial Committee, said at p. 167 "The other theory is that a public ship in foreign waters is not, and is not treated as territory of her own nation. The domestic Courts, in accordance with principles of international law, will accord the ship and its crew and its contents certain immunities, some of which are well settled, though others are in dispute. In this view, the immunities do not depend upon an objective exterritoriality, but on implication of the domestic law. They are conditional, and can in any case be waived by the nation to which the public ship belongs. Their Lordships entertain no doubt that the latter is the correct conclusion."

He quoted with approval from the judgment of Chief Justice Marshall in *Schooner Exchange v. Mc'Faddon* "All exemptions from territorial jurisdiction must be derived from the consent of the sovereign of the territory". At page 174 Lord Atkin asks "Is it possible that the doctrines of international law are so rigid that a local burglar who has broken and entered a foreign embassy and, having completed his crime, is arrested in his own country, cannot be tried in the Courts of the country?"

There are other passages in that case (which was dealing with a state ship) which I think clearly indicate that foreign state owned ship and land are not, when within the territory of another state, exterritorial and, part of the foreign state. See *Wheaton's* International Law, 6th Ex. Vol. I, pp. 455–6. Possibly the law of Russia has a bearing on the question. It is not necessary to pursue this point, because in the view I take the cigars are the property of an enemy, and such immunity as an Ambassador enjoys as to his private property is the immunity accorded to it in the state to which he is accredited.

The privilege affording Ambassadors and other accredited representatives of foreign countries immunity from all writs and processes is an ancient doctrine of the common law declared in terms by the Diplomatic Privileges Act, 1708. We are not concerned with the privileges accorded by other states to Ambassadors accredited to them. I have no doubt that in normal times courtesies are extended to Ambassadors accredited by a friendly nation to another nation while they are in transit through our country, but I do not imagine that similar facilities would be given to an enemy Ambassador if he attempted to pass through our territory on his way to assume his duties in a neutral state.

The Reprisals Order in Council of 1939 is similar to, though by no means identical with, the Order in Council of 11th March 1915. This earlier order referred to goods with an enemy destination, or which are enemy property, indicating that destination is not the only test of the enemy character of the property. The word 'destination' is omitted from the present Order. It is superfluous. While destination has a vital bearing on contraband, this Order deals with goods which are not contraband and there is no reason why the words 'enemy property' should not be given their ordinary meaning of

property owned by a person who is an enemy national irrespective of the destination of the property.

I conclude that these cigars the property of a German national who was not residing in any part of the British Empire at the time when the cigars were seized must be regarded as enemy property, and I make an order that the proceeds of the sale of these cigars be retained in Court.

Order accordingly.

YEO CHIANG SWEE vs. G. F. STRICKLAND.

[Orig. Civil Juris. (Terrell, J.A.) November 17, 1941]

Landlord and tenant—Waiver of Notice to Quit —Agreement for new tenancy.

The plaintiff being the landlord of the dwelling house occupied by the defendant on a monthly tenancy obtained from the Rent Assessment Board leave to take proceedings to eject the defendant. He gave the defendant notice to quit expiring on the 31st of August 1941. The defendant applied to the Rent Assessment Board on the 11th July 1941 to set aside their previous order. The Board on the 12th of August 1941 refused the application. On the 29th of August 1941 the defendant again applied to the Board to set aside their order of the 12th of August 1941, that is to say, the order refusing to vary the order giving leave to eject. The application was heard on the 2nd of September 1941 and was refused but on that occasion Counsel for the defendant asked for an extension until the end of September. The Board considered this reasonable and asked plaintiff's Counsel if he would agree. Plaintiff's Counsel agreed. On the 2nd of September 1941 the defendant paid to plaintiff the rent for September. On the 6th of October the plaintiff commenced an action for ejectment. The defendant applied for leave to defend and set up (inter alia) waiver of the notice to quit.

Held, that the original tenancy had expired on the 31st of August and there had been a new agreement for a new tenancy to expire on the 30th of September and therefore no question of a notice to quit arose.

Cases referred to:—

(1) *Hartell v. Blackler* 1920 2 K.B. 161.

(2) *Davis v. Bristow* 1920 3 K.B. 428.

(3) *Penrhos College Ltd. v. Butler* 1920 3 K.B. 428.

SUMMONS FOR JUDGMENT.

T. W. Ong for plaintiff.

C. H. Withers-Payne for defendant.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, J.A. The plaintiff is the owner of premises known as No. 6 Orange Grove Road, Singapore. For some months before March 1941 the defendant had been the tenant of the house on a monthly tenancy, but in March he was not in occupation, having sublet. About this time the plaintiff received notice to quit the premises which he himself was occupying, and required No. 6 Orange Grove Road for his own use. The defendant was not willing to give up possession, and on the 5th March 1941 the plaintiff applied under the provisions of s. 8 of the Increase of Rent (Restriction) Ordinance 1939, to eject him. The application came before the Rent Board on the 25th March 1941, when the plaintiff was given liberty to proceed. Notice to quit was duly given and when not complied with, ejectment proceedings were commenced. The defendant alleged that he was entitled to two months' notice. Without contesting this point, the plaintiff discontinued, and gave a fresh notice to quit the premises on or before the 31st August 1941.

On the 11th July 1941 the defendant applied to the Rent Board to set aside their previous order on the ground (inter alia) that the plaintiff had alternative accommodation in a house belonging to him and known as No. 11 Bishopsgate, Singapore. The application came before the Board on the 22nd July, when the plaintiff offered 11 Bishopsgate to the defendant if he vacated 6 Orange Grove Road. The hearing was adjourned to enable defendant's counsel to consult his client. The plaintiff gave the defendant the keys of 11 Bishopsgate and the latter went over the house, incidentally leaving it with all the doors and windows open. On the 4th August he refused to accept 11 Bishopsgate as alternative accommodation. When the application was heard on the 12th August 1941, the Board refused to review the previous order.

Notwithstanding this rebuff the defendant was not discouraged, and on the 29th August 1941 made yet one more application to the Rent Board to set aside their order of the 12th August, that is to say, the order refusing to vary the previous order of the 25th March. It appeared that having refused 11 Bishopsgate on the 4th August, the defendant had changed his mind when the Board rejected his application on the 12th August, and was now prepared to accept the alternative accommodation previously offered. The plaintiff, however, was not prepared to renew his offer. The application was heard on the 2nd September. Dr. Withers Payne, defendant's counsel, admitted that it was not a legal requirement that alternative accommodation should be offered. There is no record of any other argument presented to the